



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWK/165712

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services in regard to Medical Assistance, a hearing was held on June 17, 2015, at New Richmond, Wisconsin.

The issue for determination is whether petitioner requires the care generally provided in an institution because of a severe emotional disturbance.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jalex Lor

St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner's IQ and speech are in the normal range for a child his age.

3. The petitioner was in the [REDACTED]. The program dismissed him because his mother failed to follow through on its recommendations.
4. The petitioner exhibited behavior consistent with his age around the [REDACTED] instructors.
5. The petitioner has punched people in his home. He does not follow his mother's instructions. He has not endangered his own or anyone else's life.

DISCUSSION

The petitioner is a 5 ½-year-old boy diagnosed with autism who seeks benefits under the Children's Long-Term Support Waiver (CLTS). To qualify, a child must be part of one of the three waiver target groups: children with developmental disabilities, children with physical disabilities, and children with severe emotional disturbances. *Medicaid Waivers Manual*, p II-4. The petitioner's IQ is 98, which is in the average range, so he is not developmentally disabled. And he has no significant physical problems. This means that to qualify, he must demonstrate that she has a severe emotional disturbance.

This level of care is described in *Institutional Levels of Care, Children's Long Term Support Program in Wisconsin* found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf. It requires the petitioner to demonstrate a "long-term, severe mental health condition diagnosed by a licensed psychologist or psychiatrist." He must also demonstrate persistent behaviors that create a danger to self or others, requiring ongoing therapeutic support in order to be able to live at home and in the community." *Id.* p.8. The Level of Care manual goes onto state: "*The intensity and frequency of the required ongoing therapeutic support must be so substantial that without the support the child is at risk of inpatient psychiatric hospitalization.*" *Id.* (Emphasis in original)

The petitioner must meet all four of the following criteria to establish a severe emotional disturbance:

1. The child has a **Diagnosis** of a mental health condition; and
2. The child's mental health diagnosis or symptoms related to the diagnosis have existed and are expected to persist for a specific **Duration** of time; and
3. The child is in need of **Involvement with Service Systems** related to mental health support; and
4. The child exhibits **Severe Symptomology or Dangerous Behaviors** at a specific intensity and frequency of required interventions such that without this direct, daily community-based intervention, the child is at risk for institutionalization within a psychiatric hospital.

Id. (emphasis in original)

He meets the first criterion because he has autism. *Id.*, p.9. He meets the second because he has had these symptoms for over six months and they can be expected to last for at least another year. He probably meets the third criterion because he receives psychotherapy. *Id.*, p. 10-11. The question is whether she exhibits severe symptomology or dangerous behaviors.

There are four standards for meeting severe symptomology and four for meeting dangerous behaviors. Severe symptomology involves psychotic symptoms, suicidality, violence, or anorexia/bulimia. All of these standards require that the child not only exhibit the behavior but that he must require "direct, daily interventions to avoid institutionalization in a psychiatric hospital." *Id.*, p.13. There are several categories of dangerous behaviors. They include high risk behaviors, self-injurious behaviors, aggressive and offensive behaviors, and lack of behavioral controls. *Id.*, p.14. All of these involve only the most serious behavioral problems a child can exhibit such as frequent cutting of herself, suicide attempts, or frequent

sexual contact with strangers or those much older. All require intervention such as constant supervision, frequent police involvement, or hospitalizations. *Id.*, pp. 13-21.

The petitioner has hit people in his own home and has had incidents in which the police were called. But until recently he was in the [REDACTED] and displayed none of these behaviors there. That program's notes indicate that he has been removed from that program because his mother does not follow through on its treatment. She denies this. Regardless, the fact that the petitioner can behave in some situations indicates that without the program he will probably not be institutionalized. Furthermore, the occasional violence that he displays toward others at home, while obviously concerning, is not the type of serious behavior that meets the severe emotional disturbance criteria because it does not endanger the lives of others and it does not require daily interventions to avoid institutionalization in a psychiatric hospital. *Id.*, p.13. The children's waiver is meant to provide benefits to only the most severely handicapped. The petitioner simply does not fall into this category because she does not demonstrate the symptomology or high risk behaviors required fit into that category. This can be seen by a review of pages 13-22 of the *Institutional Levels of Care, Children's Long Term Support Program in Wisconsin* found online at http://www.dhs.wisconsin.gov/bdds/waivermanual/CLTS_LOC.pdf.

CONCLUSIONS OF LAW

The petitioner is not eligible for the Children's Long-Term Care Waiver because he does not have a severe emotional disturbance.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

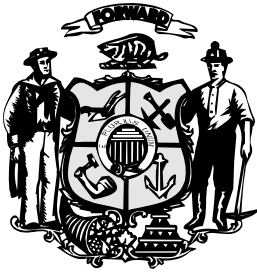
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 23rd day of July, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 23, 2015.

St. Croix County Health & Human Services
Bureau of Long-Term Support